

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9664 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

NANJIBHAI MANJI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9664 of 2002
MR YS MANKAD for Petitioner No. 1
MR HC PATEL ASSTT GOVERNMENT PLEADER for Respondent No. 1-2
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 27/11/2002

ORAL JUDGEMENT

#. Heard learned advocate Mr.Y.S.Mankad on behalf of the petitioner and learned AGP Mr.H.C.Patel appearing on behalf of the respondent authority.

#. In the present petition, the order passed by the Development Commissioner dated 25th July, 2002 against the petitioner has been challenged on the ground that Section 116 [3] of the Gujarat Panchayats Act, is not mandatory but it is directory. In this petition, the question has been raised by learned advocate Mr.Mankad relying upon the decision of this Court in Special Civil Application No.6968 / 2002 dated 3rd October, 2002. Learned advocate Mr.Mankad has submitted that the Development Commissioner has passed the order only considering and interpreting the Section 116 [3] of the Gujarat Panchayats Act, is mandatory. He also submitted that the Development Commissioner has come to the conclusion that the moment the Panchayat fails to pass the budget on or before 31st March of the current year, then automatically the Panchayat shall have to be superseded under Section 253 of the Act. He also submitted that the view taken by this Court is otherwise and this Court has come to the conclusion that while interpreting the provisions of Section 116[3] of the Act, the same are directory and not mandatory. Learned advocate Mr.Mankad also submitted that subsequently on 16th April, 2002 the budget has already been passed by the Panchayat but this aspect has not been taken into consideration by the Development Commissioner at the time of passing the impugned order.

#. Learned AGP Mr.H.C.Patel has submitted that the Development Commissioner has rightly interpreted the provisions of Section 116[3] of the Gujarat Panchayats Act, 1993. While interpreting the said Section, the Development Commissioner has also considered Section 116 [4] of the Gujarat Panchayat Act and reading together the provisions of both these sub Sections 116[3] and 116[4], the Development Commissioner has rightly come to the conclusion that the provision made under Section 116[3] is mandatory. Therefore, the Development Commissioner has rightly passed the order and before passing the order impugned in this petition, show cause notice served on the petitioner was considered by the Development Commissioner and therefore, the Development Commissioner has not committed any error while passing the order dated 25th July, 2002.

#. I have considered submissions of the learned advocates for the parties. I have also perused the order passed by the Development Commissioner, State of Gujarat, Gandhinagar. However, fact remains that undisputedly the budget not passed prior to 31st March of the current year but subsequently, the budget has already been passed on

16th April, 2002. The Development Commissioner has considered that even if the Panchayat fails to pass the budget on or before 31st March of the current year, then the Panchayat shall have to be superseded under Section 253 of the Act. This question has been examined by this Court in Special Civil Application No.6968 / 2002 dated 3rd October, 2002 [Coram : Mr.Justice P.B.Majmudar, J.]. This Court has considered the question that is it the mandate of the Legislature that moment a Panchayat fails to pass budget on or before 31st March of the current year, the said Panchayat is required to be dissolved / superseded, or whether any discretion is left with the State Government not to effect dissolution or supersession of the said Panchayat even if such budget is not passed within the stipulated time. The answer given by this Court that "considering the aforesaid aspect of the matter, in my view, the non passing of the budget itself would not, ipso facto, result in supersession of the Panchayat and the provision is directory and not mandatory. Further in view of the judgment of the learned Single Judge of this Court [Coram : Mr.Justice J.M.Panchal, J.] and the judgment of the Division Bench of this Court, it cannot be said that the provision is mandatory. As aforesaid, since the Development Commissioner has not examined this aspect on merits, the matter is sent back for reconsideration. The Development Commissioner may pass fresh order in accordance with law expeditiously. Since the order is set aside, the Development Commissioner will have to pass fresh order under the provisions of Section 253 of the Act and till such decision is taken, naturally, the elected body will be entitled to continue to function."

#. I have considered the judgment dated 3rd October, 2002 rendered by this Court as referred to above. In the present petition also, very similar question has been raised by learned advocate Mr.Mankad. Therefore, according to my opinion, the view taken by this Court squarely applies to the facts of the case on hands and therefore, in view of this Court, there is no need to give separate reasoning in support of the conclusion and the reasonings given by this Court in the aforesaid judgment will apply to the facts of this case also.

#. In view of above discussion, present petition deserves to be allowed and the same is allowed accordingly to the extent indicated here as under. The impugned order passed by the Development Commissioner and the consequently order appointing the Administrator dated 25th July, 2002 are hereby quashed and set aside. The matter is now remanded back to the Development

Commissioner for taking decision afresh. The Development Commissioner shall take decision afresh in the matter taking into consideration all the material on record. However, during the remand proceedings before the Development Commissioner under Section 253 of the Act till the date of the decision is arrived as directed above, the Elected Body will be entitled to continue to function in the office.

Rule is made absolute accordingly with no order as to costs.

The copy of the order passed by this Court in Special Civil Application No.6968 / 2002 dated 3rd October, 2002 [Coram : Mr.P.B.Majmudar, J.] be maintained along with present order.

Date : 27-11-2002 [H.K.Rathod, J.]

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